

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

In re: Tamara Dale Irby

Case No. 09-60985

Chapter 7

Debtor(s)

**MOTION TO APPROVE PUBLIC AUCTION SALE AND TO SELL REAL
PROPERTY FREE OF LIEN and APPLICATION FOR AUTHORITY TO
PAY AUCTIONEER COMMISSION AND EXPENSES FROM SALE
PROCEEDS**

Comes now William F. Schneider, Trustee in Bankruptcy for Tamara Dale Irby, Debtor, and files this Motion and Application pursuant to 11 U.S.C. §§ 363(f) and 330(a)(1), and Bankruptcy Rules 2016, 6004, 9013 and 9014, seeking an order from the Court authorizing the Trustee to sell certain real property of the Debtor's estate pursuant to an Auction Contract of Purchase, **FREE OF LIEN**, for cash, and for authority to pay from the proceeds realized from the sale the auctioneer's commission earned thereon. In support of this Motion and Application, Trustee states unto the Court as follows:

1. That the Debtor filed her voluntary chapter 7 bankruptcy proceeding on March 30, 2009, and Trustee was duly appointed as Trustee of the Debtor's bankruptcy estate.
2. Among the assets in the Debtor's bankruptcy estate on the petition date was a 1/3 interest in the intestate estate of her father, Jerry Dale Irby, which consisted of his undivided 1/5 interest in real property located in Campbell County, Virginia. The Debtor shared her interest with her father's widow, Joji Romal Ciocon Irby, and her half-sister, Jodilee Shayne Irby, a minor.
3. On April 9, 2009, the Irby heirs filed a Complaint in the Circuit Court for Campbell County, Virginia as Case No. 031CL09000150-00 seeking to partition the Irby real property. Upon learning that Tamara Irby had filed a Chapter 7 bankruptcy petition, the

complaint in the partition suit was amended to substitute William F. Schneider, as Bankruptcy Trustee, for Tamara Irby. On August 18, 2010, the Campbell County Circuit Court entered an order partitioning the Irby Property as required in the Complaint.

4. Pursuant to the partition suit, a deed of partition dated February 18, 2011 was recorded on March 28, 2011 in the Circuit Court of Campbell County, Virginia as Instrument No. 110001558 conveying unto William F. Schneider, Bankruptcy Trustee for Tamara Dale Irby, Joji Romal Ciocon Irby, individually, and Joji Romal Ciocon Irby in her capacity as Trustee for Jodilee Shayne Irby, as tenants in common, in equal one-third (1/3) shares, the following described real estate situated in Campbell County, Virginia (the "Property"):

All that certain tract or parcel of land, together with the buildings and improvements thereon and the privileges and appurtenances thereunto belonging, situate, lying and being in Patrick Henry Magisterial District, Campbell County, Virginia, and being Tract 1, containing 54.548 acres, more or less, as shown upon a plat of survey dated October 16, 2009, made by Albert E. Neighbors, Jr., L.S., entitled "Plat Showing Family Division, Tracts 1-7 Property of Richard L. Irby, Jr. and others, Patrick Henry District, Campbell County, Virginia, Surveyed for Richard L. Irby, Jr. & Others", which said plat is recorded in the Clerk's Office of the Circuit Court of Campbell County, Virginia, in Plat Cabinet C, Slide 74, pages 731 and 732. See also Instrument No. 110001079.

The property is a portion of the property conveyed unto Virginia I. Pillow, James Arthur Irby, Steve Randall Irby, Richard Lloyd Irby, Jr. and Jerry Dale Irby, by deed dated April 15, 1988 from Richard Lloyd Irby, Sr., recorded in the Clerk's Office of the Circuit Court of Campbell County in Deed Book 667, page 475. Jerry Dale Irby died intestate July 31, 2007, survived by Tamara Dale Irby, Joji Romal Ciocon Irby and Jodilee Shayne Irby, as his sole heirs at law. By decree of the Circuit Court of Campbell County entered August 18, 2010, a copy of which is attached and incorporated by reference and recorded as Case No. 031CL09000105-00, William F. Schneider was deemed to succeed to the interest of Tamara Dale Irby by virtue of his appointment as bankruptcy trustee subsequent to Tamara Dale Irby's filing of Chapter 7 Bankruptcy in U.S. Bankruptcy Court for the Western District of Virginia. Also by such order, Joji Romal Ciocon Irby was appointed Trustee and authorized to convey the interest of Jodilee Shayne Irby, a minor, in such real estate.

This conveyance is made expressly subject to all valid and existing conditions, restrictions, reservations, and easement of record and now binding upon said real estate.

The real estate is designated on the Campbell County tax map as tax map number Portion of 89-1-5D.

5. On December 27, 2012, an order was entered in Adversary Proceeding No. 12-06007 which authorized the Trustee to sell the jointly owned Property free and clear of liens.

6. The co-owners, Joji Romal Ciocon Irby and Jodilee Shayne Irby, the guardian *ad litem* for Jodilee Shayne Irby, the attorney for the Debtor, and all creditors and other parties in interest were served by mail on September 23, 2013, with the Trustee's Motion For Authority To Sell Jointly Owned Real Property At Public Auction Free and Clear of Liens and Encumbrances and with the Notice of Hearing thereon to be held on October 17, 2013. On October 18, 2013 an order was entered in this case authorizing the Trustee to sell the jointly owned Property at public auction and all parties were served by mail with the Order. A copy of that order is attached as Exhibit A to the original of this motion filed with the Clerk of the Bankruptcy Court.

7. Among other things, the Order granted the co-owners the right to purchase the Property at the same price as that in any contract of sale obtained pursuant to the auction, provided that notice of an intention to do so be given to the Trustee within ten (10) days following the filing of a motion by the Trustee to approve the public auction sale.

8. A summary appraisal report by Dawson Appraisals, Ltd. prepared February 8, 2010 valued the unimproved Property at \$146,000. The Campbell County Tax Assessor values the Property at \$79,700.00.

9. On January 12, 2013, an order was entered appointing Coldwell Banker Read & Co. Realtors real estate agent for the trustee. On February 13, 2013, the trustee listed the Property with an asking price of \$136,500.00. Only one offer to buy the Property was received by the Trustee offering \$110,000.00. A counter-offer at \$125,000.00 was made, but the offeror

made no counter offer. The offeror attended the auction described in paragraph 13 below but was not the high bidder.

10. No other offers to purchase the Property were received by the Trustee through November 20, 2013.

11. Torrence, Read & Forehand (“Auctioneer”) of Lynchburg, VA (an auction company on the U. S. Trustee’s Office “List of Approved Auctioneers”) was employed by the Trustee to conduct a public auction sale of the Property pursuant to Order of Employment entered in the instant case on October 28, 2013, and agreed to be compensated based upon a commission fee of 10% of the gross sale proceeds realized, plus up to \$300.00 for expenses.

12. Auctioneer advertised the November 20, 2013, public auction sale of the Property for three weeks in the News and Advance and Real Estate This Week. The auction was promoted on the auctioneer’s website and AuctionZip.com for 30 days prior to the auction complete with plats, aerials, descriptions and general information. The auction was viewed 2,447 times online. A direct mail brochure was mailed to over 2,400 clients on their in-house mailing list; 2 Auction Blasts were e-mailed to over 2,200 clients. Four auction sign was placed on Rt. 501 to the auction site; agents were on the property for two public showings and the property was available for self-guided visits during the 30-day promotional period.

13. Auctioneer conducted the public auction sale on-site at 12:30 p.m. on November 20, 2013. Auctioneer reported to Trustee that there were 12 registered bidders, and 16 people in attendance at the sale. The Property was knocked down to Troy Rice, 1980 Nester Rd., Thaxton, VA 24174 (the “Purchaser”), for a high bid of \$89,250.00. The Purchaser paid a \$8925.00 deposit to the Auctioneer, representing 10% of the sales price, which amount will be delivered to the Trustee and deposited in the estate’s bank account prior to the hearing on this motion. A

copy of the Auction Contract of Purchase (the "Contract") is attached as Exhibit B to the original of this motion filed with the Clerk of the Bankruptcy Court.

14. Trustee recommends that the Property be sold pursuant to the terms of the Contract, and this Motion and Application, **FREE OF LIENS**, for cash, with all valid deeds of trust, judgments, tax liens and other liens and encumbrances being removed from the title to the Property and impressed upon the sale proceeds without change in priority, waiver or prejudice, except for payment of administrative expenses and costs of sale.

Application for Authority to Compensate Auctioneer

15. Trustee seeks authority from this Court to compensate Auctioneer upon consummation of the sale of the Property the sum of \$8925.00, as compensation for its services in selling the Property. This sum represents 10% of the gross sale price. The trustee is also requesting payment of \$300.00 as expenses allowed in the Application to Employ to pay for four auction signs that were stolen and had to be remade and re-installed.

16. Auctioneer has received no compensation from this estate for these auction services which it has provided to the Trustee and this bankruptcy estate.

17. Upon information and belief of Trustee, Auctioneer has no agreement or understanding with any person or entity for the sharing of the compensation to be received for the services rendered to the Trustee and this bankruptcy estate in the subject matter.

WHEREFORE, your Trustee prays that a hearing be held upon this Motion and Application; that he be granted authority to close on the sale of the Property in accordance with the terms of the Contract, this Motion and Application, and the October 18, 2013 Order Authorizing the Sale; that the auctioneer's commission of \$8925.00 and \$300 for out-of-pocket expenses for a total of \$9225.00 be approved; and that the Trustee be authorized to pay said commission and costs, all valid deeds of trust and other valid liens against the Property in order

of priority at settlement, as outlined herein, from the proceeds realized from the sale; that co-owners Joji Romal Ciocon Irby and Jodilee Shayne Irby have ten days after this motion is filed and served to notify the trustee if one or both wish to purchase the Property on the same terms and conditions as hereunder and as provided in the auction contract of sale with Mr. Rice; and that he be granted such other and further relief as is deemed proper.

Dated: November 22, 2013

Respectfully submitted,

/s/ William F. Schneider

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